IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

LETTERS PATENT APPEAL NO.131 OF 2006
IN
WRIT PETITION NO.1013 OF 2006

M/s.Z.F.Steering Gears (India) Ltd. Appellant
vs.
Shri Ramchandra S. Tapkire Respondent

Mr.K.S.Bapat i/b.Mr.A.H.Fatangare for the appellant.

CORAM : R. M. LODHA &
A.S.BAGGA, JJ.

DATED : 27th June, 2006

P.C.

We heard Mr.K.S.Bapat, the counsel for the appellant.

2. The Labour Court in its judgment dated 13th October, 2005 recorded the finding that the complainant (respondent herein) was in continuous service from 18th October, 1991 till the date of his termination i.e. 26th June, 1993. This finding was reached by the Labour Court on the basis of the xerox copies of the documents filed by the complainant. The Labour Court recorded that the employer (present appellant) was directed to place on record the original documents, but that was not done and there is no justification for the Court not to rely on the xerox copies.

3. The appellant sought to set up the defence that the complainant abandoned the employment on his own. This defence of the appellant was not accepted by the Labour Court as there was nothing to prove that. The Labour Court recorded that admittedly prior to the termination, no notice or retrenchment compensation was offered or paid to the complainant nor any departmental enquiry was instituted for the alleged misconduct. The Labour Court, accordingly, allowed the complaint and ordered the reinstatement of the complainant with continuity of service. The Labour Court also awarded 50% back wages from the date of termination until reinstatement.

4. The employer filed revision application before the Industrial Court. The revision application was dismissed by the Industrial Court vide judgment and order dated 1st January, 2006.

5. Aggrieved by two concurrent orders, the employer filed writ petition before this Court. The learned Single Judge, after hearing the parties, dismissed the writ petition filed by the employer on 17th April, 2006. The learned Single Judge in his order recorded that the complainant sought production of documents with respect to computer entries from 14th October, 1991 to 25th July, 1993 during which period entries of payments made

to the complainant were recorded but the employer neither produced those documents nor furnished any explanation.

6. The counsel for the appellant contended that the complainant wanted the employer to produce before the Labour Court the non existent documents and, moreover, the documents were sought by the notice dated 25.02.2005 at the fag end of the proceedings. He submitted that the appellant produced the muster roll which was quite important to decide the controversy.

7. The learned Single Judge observed in the impugned order regarding non-production of the documents by the appellant thus:

> "22. The petitioner-company was expected to preserve documents with respect to employment of the workman - present respondent, especially, when litigation was pending in the Labour Court. The documents were not maintained by the petitioner company.
>
> 23. The respondent-complainant has immediately filed complaint almost within 90 days from the date of alleged termination. It is difficult to believe that when litigation was pending in Court the employer would dispose of or destroy the documents; which were vital to contest litigation pending in the Court.
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> 24. In view of the submissions made, the labour Court was pleased to direct the petitioner-employer to produce thirteen (13) documents. The document at Sr.No.8 relating to payment entries recorded in the computer; for the period 14.10.1991 to 25.6.1993 were

> neither produced by the petitioner nor any explanation was furnished as to why those documents could not be produced. Even existence of these documents were also not denied by the petitioner-employer. In the absence of any explanation in this behalf, the Court below was perfectly justified in drawing an adverse inference."

8. The learned Single Judge found no justification to interfere with the order of the Labour Court affirmed in revision by the Industrial Court.

9. In our considered view, the concurrent orders do not suffer from any error justifying interference in appeal.

10. Letters Patent Appeal is dismissed in limine.

(R.M. LODHA,J.)

(A.S. BAGGA,J.)